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ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN CLEARY,  
Plaintiff

v.

KENNETH KYLER, ET. AL,  
Defendants

CIVIL ACTION #1:CV-00-2125  
(Judge Caldwell)

FILED  
HARRISBURG, PA

OCT 15 2001

MOTION IN OBJECTION TO THE DEFENDANTS'

NOTICE OF ORAL DEPOSITION.

MARY E. D'ANDREA, CL  
Per 218  
Deputy Clerk

The Pro Se Plaintiff, John Cleary, hereby moves this Court, pursuant to Fed. R. Civ. P. 30(b), to deny the defendants' Notice of oral Deposition at the State Corrections Institute at Camp Hill, Po Box 200, Camp Hill, Pa 17001-0200, in favor of a tele-conference deposition, as stipulated in Fed. R. Civ. P. 30(b), and for such other grounds as set forth in the supporting brief.

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IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

John Cleary,  
Plaintiff

CIVIL ACTION No. CV-00-2125

(Judge Caldwell)

Kenneth Kyler, et al.,  
Defendants

PLAINTIFFS BRIEF IN SUPPORT OF A  
TELECONFERENCE DEPOSITION.

FILED  
HARRISBURG

OCT 15 2001

MARY E. D'ANDREA  
Per [Signature]  
Deputy Clerk

I. STATEMENT OF CASE:

This is a civil rights action, initiated by John Cleary, a pro se prisoner confined at State Corrections Institute at Pittsburgh; and formerly confined in the Special Management Unit (S.M.U.) at State Corrections Institute at Camp Hill. The defendants include former Superintendent Kenneth Kyler, former S.M.U. Unit Manager William S. Ward, now B-Unit Manager at Camp Hill, and former mail room Supervisor at Camp Hill, Howard Imschweiler.

## 11. ARGUMENT

1. When evaluating the plaintiff's motion, the court must consider that if the plaintiff is transferred to Camphill, that he will be in the direct custody of the defendants, and subject to many harassments, obstructions, and indignities by the defendant's agents, allies, colleagues, or persons employed at Camphill who may have a vested interest in the instant civil action.

2. The plaintiff, who was confined in the S.M.U. Camphill from October 10, 1997, until , 1999, will be immediately classified as a security risk, and immediately upon reception, be placed in the Restricted Housing Unit (R.H.) and/or S.M.U.

3. The plaintiff will be in the custody of the friends, agents, allies, colleagues and persons with interests in the instant civil action, in a secluded area of the prison.

4. The plaintiff believes that if he is transferred to Camphill for this deposition, he will be intimidated, coerced, and/or assaulted, deprived of food and/or water, exercise, and the use of the law library, legal assistance in the law library, and/or the use of U.S. mail while in the custody of the defendants.

5. The plaintiff believes that it will be detrimental to the presentation of his case if the court allows the defendants to transfer the plaintiff to their direct custody for any amount of time, because of the reasons stated in this brief.

6. Furthermore, the plaintiff is still under the care of several psychiatrists, and also a psychologist, because of traumas believed to be suffered while the plaintiff was confined at Camphill previously.

7. The plaintiff is not opposed to allowing the defendants to conduct a deposition in the presence of a court officer. The plaintiff offers, if this court wills, a teleconference deposition, as a viable alternative to the plaintiff's appearance at Camphill.

8. The plaintiff asserts that a telephonic deposit would be more economical to the defendants, considering the per hour cost of man power, overtime wages for the escorts, meals, gasoline, housing, etc. A telephonic deposit would also be more convenient to the plaintiff, as to scheduled appointments with psychiatrists, and psychologist, law library research time, access to research materials, photocopy etc.

9. As denoted in Fed. R. Civ. P. 30 (b), a telephonic deposition in the presence of a court of is sufficient as a personal appearance.

10. Both Pittsburgh and Camphill have the capacity to conduct a telephonic deposition.

11. If the court wills, a telephonic/tele conference deposition is in the best interests of all involved parties.

### III. Conclusion

For the above reasons, it is respectfully requested that the Court grant the plaintiff's motion in objection to the defendant's NOTICE OF ORAL DEPOSITION (and/or appearance at Camphill.)

Respectfully Submitted,



John Cleary #DF5779  
Pro Se Prisoner.

Po Box 99901  
Pittsburgh, Pa 15233.

Dated September 28, 2001.

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN CLEARY,

Plaintiff

v.

KENNETH KULER, ET. AL,

Defendants

CIVIL ACTION No. 1:CV-00-2125  
(Judge Caldwell)

CERTIFICATE OF SERVICE


I hereby certify that I am, this day depositing in the U.S. Mail the foregoing Plaintiff's motion in objection to the defendant's NOTICE OF ORAL DEPOSITION AT S.C.I. CAMP HILL, upon the person and manner indicated below.

Service by first class mail  
addressed as follows:

U.S. District Court  
228 Walnut St  
PO Box 983  
Harrisburg, Pa 17108

Office of Chief Counsel  
Raymond W. Dorian  
Assistant Chief Counsel  
55 Utley Drive  
Camp Hill, Pa 17011

DATED: SEPTEMBER 28, 2001.

X   
John Cleary \* DF5779  
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Pittsburgh, Pa 15233